IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2356 of 2007

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATIK RAVINDRABHAI MEHTA - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :
PETITIONER IN PERSON
MS MINI NAIR, AGP for Respondent(s) : 1 - 4.
MR DG SHUKLA for Respondent(s) : 5,
MR PARESH UPADHYAY for Respondent(s) : 6,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 19/07/2007

ORAL JUDGMENT

Heard the learned advocates and the petitioner Shri Pratik Ravindrabhai Mehta, who appears in person.

The petitioner before this Court is an Executive Engineer (Electrical) in the State of Gujarat. He was so promoted on 14th March, 2006. Since his promotion, by order dated 16th March, 2007 made by the State Government, the respondent No.6 has been promoted as Executive Engineer (Electrical) and has been given deemed promotion from 22nd July, 2005. It is this deemed promotion as on 22nd July, 2005 by which the petitioner is aggrieved. The petitioner has submitted that the petitioner's promotion being earlier, he became senior to the respondent No.6. However, on account of the deemed promotion granted to the respondent No.6, the petitioner shall become junior to him and the petitioner may also be reverted to the lower cadre of Deputy Executive Engineer.

It appears that the cases for promotion to the post of Executive Engineer (Electrical) were considered by the Departmental Promotion Committee in the month of September, 2004. Pursuant to the selections made by the said Committee, some of the Deputy Executive Engineers were promoted to the post

of Executive Engineer. At the relevant time, disciplinary proceedings were pending against some eight of them. In view of the pending disciplinary proceedings, their promotion was made adhoc and subject to the result of the disciplinary proceedings. The petitioner was one of the said eight persons. The disciplinary proceeding then pending against the petitioner has since been completed by order dated 21st March, 2005 made by the State Government. Some of the charges levelled against the petitioner are held to be proved and some are held to be partially proved. For the guilt established against the petitioner, he has been visited with punishment of withholding of one increment for two years without future effect.

As to the respondent No.6, on the date of consideration by the Departmental Promotion Committee, no disciplinary proceeding was pending against him. But, the Vigilance Commission had recommended a disciplinary proceeding against the respondent No.6. In view of the said recommendation, the respondent No.6 was not promoted on the date when

his immediate junior was promoted as Executive Engineer i.e. on 22nd July, 2005. Feeling aggrieved, the respondent No.6 had preferred Special Civil Application No.21708/2006 before this Court. This Court (Coram: H.K.Rathod, J.), by order dated 11th October, 2006, allowed the respondent No.6 to make a representation in the subject matter of the petition and directed the State Government to consider such representation keeping in view the observations made by the Hon'ble Supreme Court in the matter of **Union of India v/s. K.V.Janakiraman** [AIR 1991 SC 2010]. In view of the said observations, after obtaining approval of the Gujarat Public Service Commission, the said respondent No.6 was promoted by impugned order dated 16th March, 2007 and has also been given deemed promotion with effect from 22nd July, 2005.

It is now the grievance of the petitioner that though the respondent No.6 has been found guilty and has been visited with some punishment, he has not only been promoted as Executive Engineer but has also been given seniority over the petitioner.

Learned AGP Ms.Nair, upon instructions received by her, states that there is no move for reversion of any of the Executive Engineers (Electrical) including the petitioner herein.

On the facts and in the circumstances of the case, the petitioner states that he shall make representation to the State Government in so far as the respondent No.6 has been given deemed promotion from 22nd July, 2005 and thereby seniority over the petitioner in the cadre of Executive Engineer. He, therefore, seeks leave to withdraw this petition.

Leave is granted. Petition is disposed of as withdrawn. Notice is discharged.

The petitioner shall be at liberty to make representation to the State Government in connection with the deemed date of promotion granted to the respondent No.6 and the seniority of the petitioner vis-a-vis respondent No.6 in the cadre of the Executive Engineer (Electrical). If such a representation is made, the same shall be decided by

the State Government in accordance with law. In case the said representation is acceptable to the State Government, the respondent No.6 shall be given opportunity to make representation against any action that may be adverse to the respondent No.6. It is further clarified that the decision of the State Government shall be final and binding to the petitioner.

(Ms. R.M.Doshit, J.)

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